



06.12.09

FTB NOTICE 2009-05

Subject: Settlement of Administrative Civil Tax Matters in Dispute

GENERAL AUTHORITY AND PURPOSE OF SETTLEMENT: Revenue and Taxation Code section 19442 authorizes the Franchise Tax Board to settle civil tax matters in dispute that are the subject of protests, appeals, or refund claims. A settlement may also include matters that may otherwise be included in a closing agreement under Revenue and Taxation Code section 19441. The Franchise Tax Board's Settlement Bureau is generally responsible for the negotiation of settlements of civil tax matters in dispute. The settlement of litigation cases is handled outside of the Settlement Bureau.

The purpose of the settlement program is to negotiate settlements of civil tax matters in dispute consistent with a reasonable evaluation of the costs and risks associated with the protest, appeal or refund claim of these matters. The settlement program should be distinguished from the Franchise Tax Board's Offer in Compromise program. If a taxpayer is only seeking relief from the further obligation to pay an undisputed tax liability based on an inability to pay, the taxpayer should contact the Offer in Compromise program at (916) 845-4787.

TYPES OF SETTLEMENT: Under the provisions of Revenue and Taxation Code section 19442, the Franchise Tax Board has authority to settle civil tax matters in dispute as follows:

Approval of settlements by the Franchise Tax Board: The Executive Officer, or the Chief Counsel of the Franchise Tax Board, if authorized by the Executive Officer, may recommend to the Franchise Tax Board, itself, a settlement of any civil tax matter in dispute. Any such recommendation must first be submitted to the Attorney General. Within 30 days following receipt of a recommendation, the Attorney General is required to review the recommendation and advise in writing of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The members of the Franchise Tax Board must approve or disapprove the settlement recommendation within 45 days of the submission of the recommendation to the members. Disapproval must be made by majority vote of the members of Franchise Tax Board. Any settlement that is not either approved or disapproved within 45 days following its submission shall be deemed approved.

Approval of small case settlements: Revenue and Taxation Code section 19442 also allows the Executive Officer and the Chief Counsel of the Franchise Tax Board, jointly, to approve the settlement of any civil tax matter in dispute involving a reduction in tax or penalties, the total of which reduction of tax and penalties does not exceed nine thousand two hundred dollars (\$9,200).¹ When such small case settlements are approved, the Executive Officer is required to notify the members of the Franchise Tax Board.

PUBLIC RECORD STATEMENTS: Whenever a reduction in tax or penalties, or total tax and penalties, in excess of five hundred dollars (\$500) is approved, a public record statement will be placed in the office of the Executive Officer of the Franchise Tax Board with respect to that settlement.

A public record statement will contain the following information:

- 1) The name or names of the taxpayers who are parties to the settlement;
- 2) The total amount in dispute;
- 3) The amount agreed to pursuant to the settlement;
- 4) A summary of the reasons why the settlement is in the best interests of the State of California; and
- 5) For any settlement approved by the Franchise Tax Board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

CONFIDENTIALITY AND FINALITY OF AGREEMENTS: Except for the public record statements described above, settlement information, including that related to negotiation, is generally considered confidential tax information. The Franchise Tax Board, the taxpayer and the taxpayer's representative enter into a Nondisclosure Agreement prior to the start of negotiations. The purpose of the agreement is to allow both parties the opportunity to negotiate without the concern that the settlement negotiations, or the results thereof, will be used in any subsequent administrative or judicial proceedings, or disclosed to third parties, except as required by law or as otherwise agreed by the parties. All settlements entered into pursuant to Revenue and Taxation Code section 19442 are final and nonappealable except upon a showing of fraud or misrepresentation of a material fact.

FORM OF TAXPAYER'S REQUESTS FOR SETTLEMENT: Any taxpayer desiring to initiate settlement of a civil tax matter in dispute must submit a written request, which must include the following information:

- 1) Taxpayer's name and current address;
- 2) Representative's name, current address, fax and telephone number;
- 3) Taxpayer's identification number;

¹ The \$9,200 amount applies to all settlements approved on or after January 1, 2009. On January 1 of each calendar year, this amount will be increased based on the percentage change in the California Consumer Price Index and rounded to the nearest \$100.

- 4) Taxable year(s) involved;
- 5) Tax amount involved;
- 6) Present status of dispute (i.e., protest, appeal, or claim for refund);
- 7) Copy of representative's power of attorney (FTB form 3520), unless a valid form is already on file with the FTB;
- 8) Good faith settlement offer, including the grounds in support of the offer;
- 9) Identification and discussion of all issues in contention, including legal and factual grounds for positions taken by the taxpayer; and
- 10) A listing of all Notice(s) of Proposed Assessment (NPA) and Claim(s) for Refund for the taxable years involved that are not part of your settlement request. Provide the present status of each NPA(s) and Claim(s) for Refund and the amount(s) involved.

ACCEPTANCE OF SETTLEMENT REQUEST BY FTB: All requests for settlement consideration are reviewed by Settlement Bureau staff to determine if the case is a proper candidate for the settlement program.

After reviewing the taxpayer's file and the required foregoing information, including the taxpayer's good faith settlement offer, the Settlement Bureau staff will contact the taxpayer or the taxpayer's representative with its determination as to whether the case will be accepted into the settlement program. If it is determined that there is a bona fide factual or legal dispute, a case will generally be accepted into the settlement program. However, acceptance of a dispute for settlement is discretionary. Upon review, a case may be rejected for a variety of reasons. For example, if the Settlement Bureau staff determines there is a negligible litigation risk to FTB's position in the case, or if the case has not been sufficiently factually developed to allow proper settlement consideration, the case would most likely not be accepted into the settlement program.

TIMELINES: The settlement program is intended to provide taxpayers with an expedited method of resolving civil tax matters in dispute. It is expected tentative settlements will be reached in all cases accepted into the Settlement Bureau within a period of time not exceeding nine months following the acceptance of the taxpayer's request for settlement consideration. Tentative settlements become final upon approval by the Franchise Tax Board, itself, or for small case settlements, the Executive Officer. Except with the approval of the Chief Counsel, cases in which tentative settlements have not been reached within the nine-month time frame will be removed from settlement consideration and returned to their pre-settlement status (i.e., protest, appeal, or claim for refund).

The following general timeframes apply to the settlement process:

Situation	Timeframe Up To			Action
	Work-ing Days	Weeks	Months	
Review of Settlement Request	15			From Receipt of Good Faith Offer
Acknowledgment of Acceptance into Settlement Program	5			From Date Accepted by the Settlement Bureau
First Contact by Assigned Settlement Bureau Staff Member		8		From Date Accepted by the Settlement Bureau
Bureau Director and Chief Counsel Approval			9	From Acceptance Date
Attorney General Approval			1.5	From Chief Counsel Approval Date
Franchise Tax Board Approval			2	From Attorney General Approval Date
Total for Entire Settlement Process			12.5	From Acceptance of Settlement Request

PAYMENT REQUIRED: When a tentative settlement has been agreed to between a taxpayer and the Settlement Bureau staff, the taxpayer must execute a written settlement agreement setting forth the terms of the proposed settlement. The settlement agreement becomes effective upon approval of the settlement by the Franchise Tax Board, itself, or for small case settlements, when approved by the Executive Officer. If the tentative settlement requires payment by the taxpayer, the taxpayer will be required to pay the full settlement amount prior to such approval being obtained.

CONTACTS: Taxpayers seeking additional information or desiring to initiate settlement of their civil tax matters in dispute should call or write (providing the required information set forth above) to:

Patrick J. Bittner, Director
Settlement Bureau, Mail Stop A270
Franchise Tax Board
P.O. Box 3070
Rancho Cordova, CA 95741-3070
Telephone: (916) 845-5624
Fax: (916) 845-4747
General Settlement Message Line: (916) 845-5034

Also, the following individual is available to answer questions about the settlement program:

Cindy Rogers (916) 845-4891
Manager
Settlement Bureau

This notice supersedes FTB Notice 2007-2 (June 27, 2007).

HISTORY: Other prior notices relating to the Franchise Tax Board's settlement authority and process:
FTB Notice 92-3 (August 14, 1992);
FTB Notice 92-8 (September 9, 1992);
FTB Notice 97-3 (April 1, 1997), supersedes FTB Notice 92-8 (September 9, 1992);
FTB Notice 98-11 (July 13, 1998), supersedes FTB Notice 92-3 (August 14, 1992) and FTB Notice 97-3 (April 1, 1997);
FTB Notice 99-7 (July 14, 1999);
FTB Notice 2000-06 (July 25, 2000), supersedes FTB Notice 99-7 (July 14, 1999);
FTB Notice 2001-03 (April 21, 2001), supersedes FTB Notice 98-11 (July 13, 1998) and FTB Notice 2000-06 (July 25, 2000).
FTB Notice 2003-2 (March 14, 2003), supersedes FTB Notice 2001-03 (April 21, 2001).
FTB Notice 2006-2 (February 14, 2006) supersedes FTB Notice 2003-2 (March 14, 2003).
FTB Notice 2007-2 (June 27, 2007) supersedes FTB Notice 2006-2 (February 14, 2006)